

1 Q. Of all the management personnel, the
2 personnel either in Wilmington or in
3 Philadelphia, do any of them work solely for the
4 Atlantic City system or do their responsibilities
5 carry over the other Comcast markets?

6 A. The people at the retail center work
7 solely for Atlantic City.

8 Q. I'm now discussing the management staff
9 that's in either Wilmington or Philadelphia.

10 A. I don't believe so. There may be a
11 controller or accounting people who work solely
12 on Atlantic City matters but I don't know for
13 certain if that's the case.

14 Q. Those higher in authority such as
15 Ms. Hillman or Mr. Dombroski, Mr. Moerman, their
16 responsibilities do carry over to other markets
17 other than Atlantic City, correct?

18 A. Yes.

19 Q. To your knowledge, has Mr. Thompson
20 ever expressed any dissatisfaction over any
21 individual employee of Comcast?

22 A. I wouldn't say any particular
23 dissatisfaction. I mean, there are times when
24 someone from Comcast has one opinion about
25 something and he has a different opinion and

1 those things are worked out through the
2 discussions and he may say well, I didn't like
3 that guy's opinion about the issue. But that's
4 about all.

5 Q. He's never told you that he thinks some
6 employee is doing a really poor job?

7 A. No.

8 MR. WEBER: That's all the questions I
9 have.

10 EXAMINATION BY COUNSEL FOR
11 FEDERAL COMMUNICATIONS COMMISSION
12 BY MR. REIDELER:

13 Q. I would like to touch a bit on
14 Mr. Thompson's financial obligations to the
15 Atlantic system. How was the initial
16 construction of the system financed?

17 A. The initial construction of the system
18 was financed through a loan from Provident Bank.

19 Q. And was the money borrowed by Ellis
20 Thompson Corporation?

21 A. Yes, it was.

22 Q. And this loan was exclusively Ellis
23 Thompson's corporation's, it didn't involve
24 Amcell or any other management group?

25 A. No. Ellis Thompson Corporation is the

1 sole borrower and the sole party responsible for
2 that obligation.

3 Q. What is Mr. Thompson's responsibility
4 with respect to the loan?

5 A. Mr. Thompson's responsibility with
6 respect to the loan is really as an officer of
7 Ellis Thompson Corporation. He has seen and
8 reviewed and executed the loan documents. He is
9 not personally liable for the loans.

10 Q. He's not a cosigner?

11 A. No, he is not a guarantor or cosigner
12 of the loan.

13 Q. Are either Amcell or Comcast cosigners
14 on the loan?

15 A. No, they're not.

16 Q. Are there any other cosigners?

17 A. No.

18 Q. Did Amcell or Comcast play any role in
19 securing this line?

20 A. They introduced us to Provident Bank.

21 Q. Now, if there were default, the bank
22 has the right to foreclose on the Ellis Thompson
23 Corporation's assets, is that correct?

24 A. The Ellis Thompson Corporation's assets
25 as well as -- I should say that you asked about

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1 Mr. Thompson's personal involvement. He has
2 pledged his stock in Ellis Thompson Corporation
3 as collateral for the loan, but the stock only.

4 Q. Were there any Comcast assets pledged?

5 A. None.

6 MR. REIDELER: I would like this item
7 labeled Lokting 17, please.

8 (Lokting Exhibit No. 17 was
9 marked for identification.)

10 BY MR. REIDELER:

11 Q. This is a letter dated March 21st, 1994
12 and it contains several attachments. Do you
13 recognize this document or these documents, I
14 should say?

15 A. Yes, I've seen these.

16 Q. Would you please explain what they are?

17 A. Well, there is a cover letter from Anna
18 Hillman to me and it encloses the financial
19 statements or the draft financial statements for
20 1993. Typically these are sent to Mr. Thompson
21 to review and approval prior to the time that
22 they become final and the financial statements
23 are issued and they're eventually sent to the
24 bank.

25 And then she would have also forwarded

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1 a draft letter to Provident Bank to extend the
2 financing because it was originally set up on a
3 relatively short maturity date and we've been
4 extending it each year. And it's typically
5 extended in connection with issuing the financial
6 statements as well because it has to do with
7 characterizing the debt as either long term or
8 short term.

9 Q. The credit is to meet current expenses,
10 is that correct?

11 A. The credit facility?

12 Q. The revolving credit.

13 A. Well, the revolving credit, the
14 outstanding balance of that revolving credit
15 represents the initial construction costs that
16 went into building the system and some increases
17 in that credit facility for some of the expansion
18 that's occurred. And then there is also some
19 principal in there for operating cash shortfalls
20 during the first few months of operations in
21 1989. But mostly it's just keeping that debt on
22 the books and the operating expenses typically
23 are paid from operating revenues.

24 Q. But it's Mr. Thompson that typically
25 renews the request for the revolving credit, is

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1 that correct?

2 A. Yes, that's correct.

3 Q. And this is done annually?

4 A. Done annually.

5 Q. I would like to turn to Exhibit 3 one
6 last time. Directing your attention to the
7 section labeled Distribution to Interest
8 Holders.

9 A. Okay.

10 Q. There you mentioned a \$400,000
11 distribution to interest holders under the CMS
12 settlement agreement.

13 A. Correct.

14 Q. Could you tell me what this agreement
15 is?

16 A. The CMS settlement agreement is a
17 settlement group -- it's an agreement among the
18 143 applicants for the Atlantic City market.

19 Q. And would you characterize this as a
20 financial obligation of the Ellis Thompson
21 Corporation?

22 A. The CMS settlement agreement?

23 Q. Yes.

24 A. Yes, I would.

25 Q. Now, has that agreement been honored,

1 the \$400,000, was that dispersed?

2 A. No, it has not. The \$400,000 -- under
3 the loan documents with Provident Bank,
4 Mr. Thompson is precluded from making a
5 distribution while the loan is outstanding and he
6 has sought Provident Bank's approval to make this
7 distribution and Provident Bank has granted that
8 approval, but the distribution has not been made
9 for other reasons.

10 Q. Now, has Comcast assumed any
11 responsibility for this obligation?

12 A. No.

13 Q. Are the Atlantic system capital
14 expenses and operating expenses paid by the Ellis
15 Thompson Corporation?

16 A. Yes.

17 Q. And does the money come from accounts
18 that are controlled by Ellis Thompson
19 Corporation?

20 A. Yes.

21 Q. And does Mr. Thompson have control over
22 these accounts?

23 A. Yes, he does.

24 Q. And is access to these accounts limited
25 to specific Comcast personnel?

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1 A. Yes, it is.

2 Q. And Mr. Thompson is the one that
3 decides what personnel have access to these
4 accounts, is that correct?

5 A. Yes, that's correct.

6 Q. And are there caps on the amounts these
7 individuals are allowed to withdraw from these
8 accounts without Mr. Thompson's prior approval?

9 A. Yes, that's in accordance with this
10 policy that we've discussed earlier.

11 Q. And again, going back to that policy,
12 it's Mr. Thompson that ultimately decides who
13 will and who won't have that authority?

14 A. That's correct.

15 MR. REIDELER: No further questions.
16 Joe?

17 EXAMINATION BY COUNSEL FOR
18 FEDERAL COMMUNICATIONS COMMISSION
19 BY MR. WEBER:

20 Q. Does Mr. Thompson have an independent
21 accounting firm or accountant review the books of
22 Ellis Thompson Corporation?

23 A. Yes, he does. Deloitte & Touche
24 performs an annual audit for the corporation each
25 year.

1 MR. WEBER: That's all the questions I
2 have.

3 EXAMINATION BY COUNSEL FOR
4 FEDERAL COMMUNICATIONS COMMISSION
5 BY MR. REIDELER:

6 Q. Just a few final questions and we'll
7 have this over with. I would like to just touch
8 on how or who receives the monies from the
9 operation. Are the revenues derived from the
10 Atlantic City system placed in any accounts other
11 than those controlled by Ellis Thompson?

12 A. No, they're not. They're placed in
13 Ellis Thompson Corporation accounts.

14 Q. Does Mr. Thompson receive a salary from
15 the corporation?

16 A. Yes, he does.

17 Q. Is that salary paid by Ellis Thompson
18 Corporation or by Comcast?

19 A. By Ellis Thompson Corporation.

20 Q. And who determines what the salary will
21 be?

22 A. Mr. Thompson.

23 Q. Has this always been the case?

24 A. Yes.

25 MR. REIDELER: I have no further

1 questions.

2 EXAMINATION BY COUNSEL FOR
3 FEDERAL COMMUNICATIONS COMMISSION
4 BY MR. WEBER:

5 Q. Has Ellis Thompson Corporation made any
6 distributions under the CMS agreement?

7 A. No.

8 Q. When the time comes for distributions
9 to be made under the CMS agreement, whose
10 decision will it be to make those distributions?

11 A. Mr. Thompson's.

12 MR. WEBER: I have no further
13 questions.

14 MR. REIDELER: That's it for me.

15 MR. LARSON: I have a few follow-up
16 questions.

17 EXAMINATION BY COUNSEL FOR
18 ELLIS THOMPSON CORPORATION
19 BY MR. LARSON:

20 Q. There may have been some confusion
21 about the distributions referred to in Lokting
22 Exhibit 3 and I just want to make sure we clear
23 that up if indeed there are any confusions.

24 The \$400,000 distribution referred to
25 in Lokting Exhibit 3, is that pursuant to the CMS

1 settlement agreement? Is there any obligation in
2 the CMS settlement agreement that a distribution
3 be made or what is that 400,000 referring to?

4 A. The CMS settlement agreement is a
5 contract and I believe that Ellis Thompson
6 Corporation, if and when it obtains the license
7 for this system by final order, will seek to
8 bring the minority parties to that agreement into
9 equity ownership in the system. And as such,
10 those persons would then be entitled to
11 distributions on a pro rata basis. But until
12 that occurs, I don't believe that there is any
13 obligation to make distributions to those
14 persons.

15 Q. Let me approach it a different way.
16 Have there been any distributions of profits made
17 to Ellis Thompson Corporation?

18 A. Ellis Thompson Corporation is a
19 Subchapter S corporation and, as such, it does
20 not pay any taxes on revenues itself but the tax
21 liability flows through the corporation to the
22 corporation's shareholders. And Mr. Thompson is
23 the sole shareholder of the corporation.

24 There have been distribution of profits
25 over the years of approximately a million and a

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1 half to \$2 million to Mr. Thompson to allow him
2 to pay the tax liability that accrues as a result
3 of system taxable income.

4 Q. Who determines whether any
5 distributions are made?

6 A. Mr. Thompson.

7 Q. Does any third party have any
8 contractual right to have a voice in whether any
9 distributions are made?

10 A. No.

11 Q. Does Mr. Thompson have to obtain
12 approval from a lender in order to make any
13 distributions?

14 A. Yes. He has agreed -- there are
15 covenants in the Provident Bank loan documents
16 that he would breach if he were to make
17 distributions without their consent.

18 Q. Other than the distributions for tax
19 purposes, have any other distributions of profit
20 been made?

21 A. Not to date, no.

22 Q. Why is that?

23 A. Well, there are three principal
24 reasons. One is that Provident Bank has
25 prohibited the distribution of profits without

1 their consent and we approached them this year
2 given the forecasted revenues for the system and
3 have obtained their consent. But up until this
4 point, it didn't seem likely that they would give
5 their consent to a distribution.

6 Secondly, the minority interest holders
7 under the CMS agreement have not been brought
8 into equity ownership. And that's really the
9 subject of the civil litigation and we have not
10 felt it prudent to make distributions to people
11 who are not actual equity owners in advance of
12 the resolution of those issues. So there is a
13 practical matter of having this contractual
14 obligation or potential obligation to make
15 distributions to them but they have not yet
16 really been brought into system ownership.

17 And then thirdly, the operating
18 revenues, the cash, have all been plowed into
19 capital improvements. And so the retained
20 earnings of the system are really reflected in
21 capital expenditures and the equipment that has
22 been purchased and they're not sitting in the
23 company in the form of cash. It's difficult to
24 make a distribution unless you have cash that's
25 actually sitting there.

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1 Q. Has Amcell contributed any cash to
2 Ellis Thompson Corporation for the operation of
3 the system?

4 A. No.

5 Q. The Ellis Thompson Corporation entered
6 into an indemnity provision with Amcell or
7 Comcast, didn't it?

8 A. Yes, there is an indemnity agreement.

9 Q. And as part of that indemnity
10 agreement, does it give Amcell/Comcast some
11 authority to comment or control the litigation?

12 A. In a limited sense. There is an
13 indemnity agreement. The indemnity is
14 conditioned upon Amcell having control over the
15 defense and settlement of litigation and so
16 Mr. Thompson would have to honor that condition
17 if he wished to seek the indemnity.

18 At the same time, Amcell's right to
19 control the defense and settlement of any
20 litigation is itself conditioned upon, number
21 one, keeping Mr. Thompson fully informed about
22 all litigation; number two, they are restricted
23 from settling any litigation in any fashion that
24 would have an effect on him or Ellis Thompson
25 Corporation without his consent so he has

1 corresponding consent right; and then thirdly,
2 the indemnity specifically acknowledges that he
3 will be separately represented before the FCC in
4 any FCC proceedings.

5 Q. Has Mr. Thompson, as a practical
6 matter, made any decisions regarding the
7 litigation?

8 A. As a practical matter, Mr. Thompson has
9 made all decisions regarding his role in the
10 litigation and has controlled his actions in the
11 litigation himself and completely independently
12 from Comcast.

13 Q. The management agreement which you
14 discussed with the counsel for the Wireless
15 Bureau, I believe, was part of Exhibit 1. How
16 long a term is that for?

17 A. It's for ten years.

18 Q. And why did Ellis Thompson Corporation
19 agree to a ten-year term?

20 A. To have some consistency over the
21 management of the system and because it was a
22 start-up system, it was anticipated that it would
23 take several years to develop fully.

24 Q. Mr. Reideler asked you whether
25 Mr. Thompson had any misgivings about

1 consolidating the Atlantic City office for
2 operations into the Wilmington operations. And I
3 think you said that he did not have any
4 misgivings. Why was that?

5 A. Well, because, in fact, he was eager to
6 do it because it represented a significant
7 savings in terms of overall operating costs of
8 the system.

9 A prior question was asked regarding
10 the Comcast management fee in Exhibit 3 and
11 whether that accurately stated Mr. Thompson's
12 feelings regarding the management fee. I
13 testified that he from time to time felt that the
14 fee was higher than it should be. And one
15 statement that's stated here is that ETC, which
16 is Ellis Thompson Corporation, recognizes that
17 Comcast brings many cost saving opportunities to
18 Atlantic City which in all fairness should also
19 be considered.

20 And the economy of scale with the
21 Wilmington operation and the cost savings there
22 were part of the give and take in the
23 corresponding side to paying the management fee
24 to Comcast. So there were cost savings that
25 offset the fee expense.

1 Q. You were reading from Exhibit 3 there?

2 A. Yes, I am.

3 Q. Mr. Thompson also purchases switching
4 services from Amcell/Comcast, doesn't he?

5 A. Yes, he does.

6 Q. Why is that?

7 A. Well, initially, the switch sharing
8 agreement was entered into because Mr. Thompson
9 determined that from a competitive standpoint, it
10 would be best to install a Motorola switch and
11 Motorola equipment in the Atlantic City system
12 but he also had a report that analyzed whether
13 markets were feasible on a stand alone switch
14 basis or a switch sharing basis. And he believed
15 that Atlantic City would be a more financially
16 feasible market if he entered into a switch
17 sharing arrangement with another party or
18 obtained switching services without purchasing
19 and operating his own switch.

20 That topic was discussed with Amcell
21 and the rate that Amcell offered appeared to be a
22 very attractive rate for those services. So he
23 entered into that arrangement for those financial
24 considerations.

25 Q. Mr. Reideler was asking you some

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1 questions about the budget approval process and
2 the fact that Mr. Thompson had not always
3 approved the budgets proposed by Amsell/Comcast.
4 Can you explain why there were instances in which
5 Mr. Thompson did not approve those budgets?

6 A. Well, typically the budgets were
7 proposed to build out the system and to increase
8 the capacity of the system. And Mr. Thompson was
9 sympathetic to the need to increase the capacity
10 of the system because he has always operated the
11 system in order to ensure proper service to the
12 customers. At the same time, he is not a person
13 who likes to borrow money and he was not
14 generally in favor of increasing the debt load of
15 the system. And typically, especially in the
16 early years, the operating revenues and cash flow
17 were not sufficient to cover the capital
18 expenditures in full and from time to time he
19 would agree to increasing the credit line to
20 cover some of those expenditures but he simply
21 did not want the system to get too loaded up on
22 debt.

23 MR. LARSON: Could I just take a couple
24 of minutes to look through my notes?

25 MR. REIDELER: Sure.

1 MR. LARSON: Off the record.

2 (Discussion off the record.)

3 BY MR. LARSON:

4 Q. Mr. Lokting, Mr. Reideler asked you
5 some questions about the allocation of costs from
6 Wilmington to Atlantic City and I believe you
7 looked at a document where you and Mr. Thompson
8 had reviewed those allocations. Do you have
9 anyone else audit or review those allocations?

10 A. Yes. As part of the annual audit,
11 Deloitte & Touche is charged with responsibility
12 of making sure that those costs check out with
13 the allocations in accordance with the agreement.

14 Q. Have you negotiated any changes to the
15 Provident loan regarding the management of the
16 system?

17 A. Yes. Initially the Provident loan
18 agreement required that Amcell manage the
19 agreement. That was not really a negotiated
20 issue at that time because we had signed a
21 long-term management agreement with Amcell and
22 they were going to manage the system.

23 So it did not appear to be a material
24 requirement by them but it became an issue as
25 part of the FCC proceeding. So I contacted the

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1 bank and the bank's concern simply was that
2 competent management be in place for the system
3 and that they have the right to ensure that
4 competent management was in place. And so we
5 amended the terms of the agreement to provide
6 simply that they would have approval authority
7 over any particular manager, including Ellis
8 Thompson Corporation itself, and there is no
9 specific requirement that Comcast or Amcell be
10 the manager of the system.

11 Q. If Mr. Thompson wasn't pleased with the
12 performance of Amcell/Comcast or its employees
13 under the management agreement and felt they were
14 not living up to their responsibilities, could he
15 terminate them?

16 A. Yes, he could.

17 Q. Who pays Stoll, Stoll, Berne, Lokting &
18 Shlachter's legal fees for matters relating to
19 Ellis Thompson or Ellis Thompson Corporation?

20 A. Ellis Thompson Corporation.

21 Q. Is that the case both for your business
22 advice and for litigation?

23 A. Yes, it is.

24 Q. And does Mr. Thompson make decisions
25 regarding the prosecution of the litigation

1 before the FCC?

2 A. Yes, he does.

3 Q. And is he the person who has the final
4 say on those decisions?

5 A. Yes, he is.

6 Q. And does he direct those decisions
7 through FCC counsel?

8 A. Yes. Generally through FCC counsel
9 with my involvement as well.

10 Q. And who is the FCC counsel?

11 A. Stuart Feldstein and his firm,
12 Fleischman & Walsh.

13 Q. And with respect to litigation
14 decisions, such as the prosecution of the
15 litigation in Oregon, who does Mr. Thompson
16 direct his decisions through?

17 A. Well, he makes the decisions and he
18 directs my law firm to carry out those decisions.

19 MR. LARSON: I have nothing further.

20 EXAMINATION BY COUNSEL FOR

21 FEDERAL COMMUNICATIONS COMMISSION

22 BY MR. REIDELER:

23 Q. There is just one point I would like to
24 touch on. This has to do with Provident National
25 Bank. Do you know if Provident also finances

1 other cellular licensees?

2 A. Yes. They are a major player in the
3 financing of cellular systems, cellular
4 businesses.

5 Q. And you mentioned that the Ellis
6 Thompson loan with Provident has certain
7 restrictions on disbursement of funds and certain
8 requirements of management.

9 A. Correct.

10 Q. Is this typical of their other loans
11 that you're aware of?

12 A. It's typical of their other loans, yes,
13 that I'm aware of and it's typical of any loan
14 where the lender is looking to the performance of
15 the business enterprise to repay the loan such as
16 our case where the corporation itself and its
17 assets are sole recourse of the lender for
18 repayment and there is no outside credit such as
19 Mr. Thompson's personal guarantee or of any other
20 cosigner.

21 MR. REIDELER: Thank you, I have no
22 further questions.

23 EXAMINATION BY COUNSEL FOR TDS

24 BY MR. SALPETER:

25 Q. I have a couple. For the record, I'm

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1 Alan Salpeter representing TDS. You're appearing
2 voluntarily today?

3 A. Yes, I am.

4 Q. And there was no subpoena issued in
5 connection with the deposition?

6 A. No.

7 Q. And the date, time and place were all
8 agreed to by counsel of the various parties?

9 A. Yes.

10 Q. Which office of Deloitte & Touche
11 audits Ellis Thompson Corporation's books?

12 A. Philadelphia.

13 MR. SALPETER: I have nothing further.

14 (Whereupon, at 1:00 p.m., the taking of
15 the instant deposition ceased.)

16

17

18

Signature of the Witness

19

20 SUBSCRIBED AND SWORN to before me this -----

21 day of -----, 19__.

22

23

24

NOTARY PUBLIC

25

My Commission expires: -----

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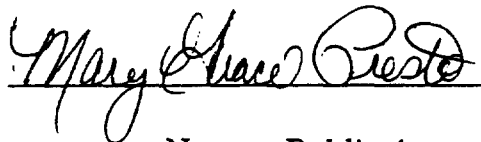
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CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA) ss.:

DISTRICT OF COLUMBIA)

I, MARY GRACE PRESTO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Notary Public in and for

the District of Columbia

My commission expires: 6-30-96

AGREEMENT

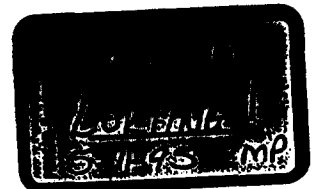
Agreement dated this 30th day of December, 1987, between Amcell of Atlantic City, Inc., a New Jersey corporation ("Amcell") having principal offices at Bayport One, Suite 400, Verona Boulevard, West Atlantic City, New Jersey 08232 and Ellis Thompson and Ellis Thompson Corporation (collectively, "Licensee") with an address at 5406 North Missouri Avenue, Portland, Oregon 97217.

Whereas, Licensee is the tentative selectee for the grant of authority by the Federal Communications Commission ("FCC") to construct a cellular communications system operating on Frequency Block A to serve the Atlantic City, New Jersey Metropolitan Statistical Area (herein the "System"); and

Whereas, Licensee is a signatory to the settlement agreement with Cellular Management Services, Inc. (herein the "Settlement Agreement"), which agreement grants to the other parties to the Settlement Agreement up to a 49.99% interest in the entity which owns the System; and

Whereas, Licensee is desirous of entering into arrangements for the construction of the System and, after construction is completed, for obtaining switching services and maintenance services from Amcell; and

WHEREAS, Licensee is further agreeable to furnishing and making available to Amcell after construction of the System is completed cellular radio service on the terms and conditions herein contained.



AM 144261